

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-219327.7

DATE: December 4, 1985

MATTER OF: The W.H. Smith Hardware Company--
Reconsideration

DIGEST:

Protest filed more than 10 working days after protester was aware or should have been aware of its basis of protest is untimely.

The W.H. Smith Hardware Company (Smith) requests reconsideration of our dismissal of its protest in The W.H. Smith Hardware Company, B-219327.6, Nov. 4, 1985, 85-2 C.P.D. ¶ _____. Smith had protested that invitation for bids (IFB) No. DLA700-85-B-0413 issued by the Defense Logistics Agency (DLA) for valves contained incorrect part numbers. We dismissed Smith's protest against this alleged solicitation impropriety as untimely because it was not filed here until October 28, 1985, almost 8 months after the February 6, 1985, bid opening. 4 C.F.R. § 21.2(a)(1) (1985).

On reconsideration, Smith contends that its protest was timely filed because the firm was not aware that the solicitation may have contained incorrect part numbers until August 19, 1985, when DLA issued another solicitation containing the correct part numbers. Smith believes that DLA improperly changed the part numbers for this procurement at that time.

Smith's protest is still untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985), require that protests be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. Here, Smith states that the information upon which its protest is based was available "on or about August 19, 1985." However, Smith did not protest here until almost 2 months later when it received notice of award to another

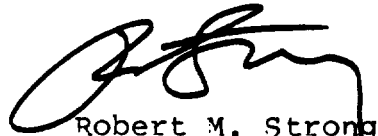
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firm. Therefore, the protest is untimely filed under our Bid Protest Regulations and will not be considered on the merits. CTM Associates, B-217367, Jan. 3, 1985, 85-1 C.P.D. ¶ 16.

The request for reconsideration is dismissed.



Robert M. Strong
Deputy Associate
General Counsel